

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CableOne)	CUID No. OK0098 (Nowata)
)	
Petition for Reconsideration)	

ORDER ON RECONSIDERATION

Adopted: March 4, 2002

Released: March 5, 2002

By the Deputy Chief, Cable Services Bureau:

1. In this Order we reconsider on our own motion, our Order, DA 01-2414 ("Prior Order"),¹ released on October 17, 2001. Our Prior Order resolved complaints against the cable programming services tier ("CPST") rates charged by the above-referenced operator ("Operator") in the community referenced above and found Operator's CPST rates to be unreasonable. In our Prior Order, we stated that Operator failed to provide the necessary CPST rate justification forms despite requests by Cable Services Bureau ("Bureau") staff. In response to our Prior Order, Operator filed a refund plan and the additional CPST rate justification form that the Bureau staff had requested. In this Order, we review Operator's additional filing, amend our Prior Order and dismiss Operator's refund plan as moot.

2. Under the Communications Act, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable.² The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),³ and our rules in effect at the time the complaint was filed, required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),⁴ and our rules implementing the legislation ("Interim Rules"),⁵ required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a

¹ In the Matter of CableOne, DA 01-2414, 16 FCC Rcd 18570 (2001).

² 47 U.S.C. §543(c) (1996).

³ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁴ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁵ See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996).

justification of its CPST rates.⁶ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁷

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.⁸ Cable operators may justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation, by filing FCC Form 1210.⁹ Operators may justify their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹⁰ Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹¹

4. Upon review of Operator's FCC Form 1240 for the projected period January 1, 1996 through December 31, 1996, we find Operator's actual CPST rate of \$9.25, effective January 1, 1996, to be reasonable. We also determine that Operator has not incurred any refund liability beginning October 12, 1995 (the date the referenced complaint was filed) because Operator true-up its refund liability for that period in its FCC Form 1240. Normally, we cannot accept additional FCC Form 1240s filed in response to a CPST rate order that has been released. This case is different because Bureau staff requested that Operator file this information in order for the Bureau staff to complete its review of Operator's October 1, 1995 CPST rate increase that was the subject of the complaint. We will not accept FCC Form 1240s filed subsequent to a released order simply to allow an Operator to attempt to true-up refund liability and avoid the payment of refunds. We also note that Operator requested that we treat the letter accompanying its refund plan as a petition for reconsideration if we did not accept its FCC Form 1240 filing. While this point is now moot, we clarify that we will not accept a letter as a petition for reconsideration. A petition for reconsideration must be filed in accordance with the Commission's rules.¹² Because we are amending our Prior Order to exclude any refund liability, we will dismiss Operator's refund plan as moot.

5. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules 47 C.F.R. § 0.321, that In the Matter of CableOne, DA 01-2414, 16 FCC Rcd 18570 (2001) IS AMENDED TO THE EXTENT INDICATED HEREIN.

6. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules 47 C.F.R. § 0.321, that the CPST rate of \$9.25, charged by Operator in the community referenced above, effective January 1, 1996, IS REASONABLE.

7. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules 47 C.F.R. § 0.321, that the complaint referenced herein IS DENIED.

⁶ See Section 76.956 of the Commission's Rules, 47 C.F.R. § 76.956.

⁷ See Section 76.957 of the Commission's Rules, 47 C.F.R. § 76.957.

⁸ See Section 76.922 of the Commission's Rules, 47 C.F.R. § 76.922.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See Section 1.106 of the Commission's rules 47 C.F.R. § 1.106.

8. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 of the Commission's rules, 47 C.F.R. § 0.321 and § 76.962, that Operator's refund plan IS DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau